Northeastern University
CRIMINAL LAW; 31228 – CRIM 3100 – 01
Spring 2012
Mon. & Thurs. – 11:45-1:25 P.M.; Snell Library 295

Lecturer/Instructor: Sharon Fray-Witzer, Esq.
Email: S.Fray-Witzer@NEU.edu
Phone: (617) 720-2527 (Office, Off Campus)
Office: Churchill 417
Office Hours: Thurs. 2:30-4:30 & By Appointment

Required Texts:
JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW (5TH ED., WEST)
JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW (5TH ED. LEXIS)(hereinafter referred to as “Supp”).
OVERVIEW:

What’s a “crime”? What should we deem “criminal”? Why punish some people, and excuse others for behavior which seems pretty similar in some ways? And how do we make the punishment “fit” the crime?

We’ll consider these questions, and learn some of the specific rules and principles of assigning criminal responsibility in our legal system.

Course Requirements*†
20% - Paper #1 (Approx. 4 pages)
20% - Mid-Term Examination
20% - Paper #2 (Approx. 4 pages)
15% - Attendance, Participation, and any Quizzes
25% - Take-Home Final Exam
EXTRA CREDIT OPTION -- TO BE ANNOUNCED

* Please see me immediately if you have a documented need for special accommodation.
† Please ask questions you may have about citing sources. Plagiarism and other forms of academic dishonesty may result in a failing grade and/or disciplinary action. See http://www.northeastern.edu/oscrr/academic honesty.html

DETAILS

You will be introduced to some major substantive and “inchoate” (incomplete) crimes, and to the principal defenses to crime. This course is about “substantive” (as opposed to “procedural”) law. It concerns what conduct is, can, or should be deemed criminal, what explanations should lead us to justify or excuse conduct which might otherwise be deemed criminal, and how crime should be punished (if at all – an interesting possibility to consider in order to understand punishment better). The course is not concerned with the rules for investigating a crime, or arresting a suspect (those issues were addressed in your Criminal Due Process course). It also will not address trial procedure, except to examine the jury’s role in determining whether the prosecution has met its burden of proof, and the burden of proof that the defendant might bear in raising certain defenses.

Another difference from Due Process: here, most of the cases will be short, state cases, and, although they must be read carefully with attention to their language and facts, they will do less articulating of the law itself than the elaborate opinions you read in Due Process. They will instead function more often as examples of the application of particular rules – which in criminal law are often statutes – illustrating a particular concept or position to make it memorable and debatable. We will often compare the facts and law of two different cases in order to note a contrast between them, so it is important to come to class having read all the cases for that day. This process will also further your understanding of legal reasoning and argument. Finally, since much criminal law is statutory, this course (unlike Due Process) will introduce you to the important legal skill of statutory interpretation.

With some notable exceptions, Criminal Law is state law (as opposed to federal law). It is, therefore, highly jurisdiction-specific; Massachusetts' criminal law may differ significantly from Tennessee’s. Most criminal law was once based on the common law (judge-made law, arising out of judges’ efforts to be consistent in their opinions over many individual cases). Even where statutes define some of the terms of a state’s law (which is the usual case), reference is made to common law
in order to fill in any gaps. Then states started codifying their criminal law in statutory “codes,” based on common definitions and principles of criminal responsibility.

In the 60’s and 70’s, judges and lawyers in the “American Law Institute” (ALI) proposed to states a way of standardizing and clarifying their criminal codes: the Model Penal Code (MPC). No state has adopted the entire MPC, but enough states have adopted enough of it to use it as a way to learn the basics of criminal law.

In many sections of the syllabus, we will often start by looking at an example of how the rule on a particular matter is generally handled under the common law (the judge-made law which controls until a state adopts a statute, and/or a particular section of the MPC, which overrides the common law, and which may operate alongside codes are statutes where that legislation is silent, or leaves matters ambiguous). Then we will often examine how that same matter is handled under the relevant provision of the MPC (in those states which have adopted that MPC provision). There may even be a third way in which the majority of states’ codes handle the matter – having rejected the relevant MPC provision. You will need to know each of these approaches to each subject: the common law’s approach, and the MPC’s approach, and any other statutory rule we study – and how they differ. This may seem difficult -- a lot to learn -- but it’s actually much easier to study the law this way than it is to simply try to memorize some set of rules. By comparing the two approaches, each rule comes alive in a way it would not otherwise. Rather than merely studying an empty rule, lying on the paper, you will be examining the effect of choosing between two different policies, which is a much more satisfying way to study the criminal law (which can change within a given state at any time), AND a better way to remember the rules. You might even take notes in class at times by drawing a line down the center of your page, noting arguments for one side of the debate on one side of the line, and the arguments on the other side of the debate on the other. Finally, it is only in the way rules are applied that they can be identified as rules. Mere words on a page are not rules in themselves.

It is important to note, though, that, in addition to reading the cases for each segment of the course, you will also have to read carefully the listed portion of the MPC, which can be found in the Appendix to your casebook.

Communication (Email): You should check your email at least once daily for course announcements, and/or supplementary materials. For example, I may send questions to be considered during the next days’ discussion.

Attendance: Attendance is required; frequent absences, or arriving late to class, will be reflected in your participation grade. Please arrive early, and with enough time to get focused, turning off cell phones well before the start of class. (I’ll try my best to do keep up my end of the deal by starting class on time). Computers should be used in class only for taking notes. Please remember to turn off other electronic devices.

Class preparation, participation, and presentations: You should come to class prepared to contribute to a lively and informed discussion, having done the reading for that week (in other words, you must read ahead), and bringing your questions. Thorough and careful preparation for class is essential to understanding this complicated subject. Such preparation requires not only reading the assigned materials, but also thinking about the reading, particularly your own positions on it, and preparing answers to the questions raised in the notes and assigned problems, even if we do not get to all of them in class, looking up the meanings of unfamiliar terms or concepts in a
dictionary, preferably a legal dictionary (that is also what it takes to build vocabulary for the GRE’s — there’s no shortcut). Preparation also includes coming to class with questions to clarify your understanding of the material. Class discussion is an important way of learning the material, and discussion includes listening carefully to your peers, and trying to understand what they are saying.

This course often sparks debate among students, sometimes heated debate. Despite disagreements which may arise, students are expected to treat one another with respect at all times. Please let me know right away if you believe that you have not been treated with respect; we all may have something to learn.

Please keep an eye on the news (which is always a good idea, in any event). I recommend the New York Times’ and the Boston Globe’s web sites if you don’t get the paper delivered. We may well discuss current cases in class, and you should have some familiarity with them.

I will award up to 10% toward your final grade for class participation, to be calculated at the end of the semester. The quality of your class participation will be as important as the quantity.

**Quizzes & Examinations:** Your performance on the mid-term examination will constitute 20% of your grade for the course, and your performance on the take-home final examination, distributed on the last day of class, and due in the middle of finals week, will constitute another 25% of your grade. Your performance on any unannounced quiz may have weight in your participation grade.

**Papers:** Two (2) papers, each 3-4 pages in length will be required, the first to be assigned about one-quarter of the way through the semester, and the second about three-quarters of the way through, to be due, in class, a little over a week after they are assigned. The quality of your writing — in terms of syntax, organization, persuasiveness, etc. — is important. Each paper will be worth 20% of your grade.

**SEE THE ATTACHED PAPER SUBMISSION POLICY**

**Extra Credit:** An extra credit option will explained when it becomes available. It will give you the opportunity to earn a few additional points toward your final grade.

**Academic Honesty:** Plagiarism, or cheating of any kind, will not be tolerated, and will result in a failing grade. It is also likely to lead to more serious sanctions.

**Grading:** Please refer to the attached grading policy. As explained above, the two papers, and the mid-term exam, will each be worth 20% of your grade, for a total of 60% of your overall grade for the course. The take-home final examination will count 25%. Attendance (required), and participation in class discussion will count 15%, part of which will be based on your performance on an in-class exercise on the Death Penalty, and part of which may be based on an announced in-class quiz. The quality of your participation will be as important as the quantity.

**Office Hours:** You are welcome to visit me during office hours, or make an appointment to see me, with any questions and/or concerns about the course. Email is the best way to reach me, and to set an appointment. If there is a reason that you can’t make it to office hours, I’ll do my best to accommodate you. My office hours are listed at the top of the syllabus. Please, if you believe you need help, do not wait to seek it; the sooner you seek help, the better you will do in the course.

**TRACE Survey Participation** is expected and appreciated; it really helps!
**PAPER SUBMISSION POLICY**

All work is due in class on the due date, delivered yourself. I do not approve extensions in advance.

(Adjusting due dates is unfair to your peers, and may be not be helpful to you. This policy is also necessary to manage my time; papers are most easily graded as a batch.)

So, if you submit a paper late (or not in class) for any reason, you bear the risk of a grade reduction.

**BUT:**

If you anticipate a problem, email me as soon as possible explaining the problem, AND explaining specifically when I can expect the paper. Then, print the email for later submission with your paper. (This does not, of course, constitute advance approval of an extension to that date).

If you can submit any version of the paper at all by the paper deadline, please do so by email, or in hard copy, along with a note on top explaining that a more complete version is coming, and when I can expect it.

Submit the late paper in hard copy to me, in person, or to a department administrator with the original email thread attached, and any additional paragraph of explanation attached, along with any other supporting paperwork, including any earlier-submitted version of the paper. (Papers slipped under my door or left in my box can be marked as received only when I first see them, and I do not visit my office every day).

If the paper is submitted within 48 hours of the deadline with no explanation, or without adequate explanation, and is not submitted as soon as possible (given the explanation), there will be a half-grade (e.g. B+ \( \rightarrow \) B) deduction. If the paper is submitted more than 48 hours after deadline but within one week of the deadline, without adequate explanation for the delay, there will be a full grade deduction.

Work submitted over one week late may not be graded.

Work for other courses will not generally be considered adequate explanation since papers are assigned well in advance and your peers are in the same boat.

Computer problems, though very real and ubiquitous, are not good excuses, particularly for a delay of longer than a couple of hours. Please have back-up systems in place.

Travelling with a team may be a good reason for submitting a paper by email, until a hard copy can be delivered, but it is not a good reason for submitting a paper late. (You really should submit the paper in hard copy before leaving).

Please follow any emailed paper with a hard copy as soon as possible, including a dated print out of the thread by which you delivered your paper by email, so that I don’t have to comb my “inbox” to confirm the claimed submission date. A paper submitted only as an email will not be graded unless there are very special (think: hospital-admission) extenuating circumstances.
GRADING POLICIES

Grades are to be a source of motivation to learn, an evaluation of your work, and, most important, a communication to you of whether and how you can learn better.

But what is most important is HOW you can LEARN better. If you want to know, I would be glad to talk to you about that further, particularly if you evince an interest in not only getting good grades, but actually LEARNING.

Points will be deducted from your participation grade for:

1. Asking any question during class which pertains only to your grade, or grades generally. This is especially true of the question, “will this be scaled?” If you would like to discuss your grade, make an appointment. (But see #5).

2. Asking questions in class which take us absurdly afield of the issue under discussion.

3. Asking questions immediately before class (unless you are telling me quickly why you must slip out of class early; it's helpful to know that). Before class, I am busy preparing, and need to focus on the material to be presented.

4. Asking questions immediately after class which should be addressed by making an appointment (i.e. - any question which takes longer than 30 seconds to address). Please ask about appointments through email; office hours are posted. Unfortunately, I cannot remember at such moments your telling me that you won't be in class on some day for some reason. Please do that by email, too. After class, I must return quickly to other duties, including teaching matters, matters for my law practice, making commuter trains home, and relieving my baby sitter.

5. Asking questions about your grade without bothering to ask any substantive question about the course material.

6. Asking questions about grading policy which can be answered by consulting the syllabus or class materials.

7. Complaining that grading policies are unfair. My grading policies are carefully considered. I would not use grading policies I thought were unfair. If you think they are unfair, you can let me know (its useful for me to consider your thoughts), but then please take it up with someone other than me.

8. Complaining that you are not receiving your paper or exam back quickly enough. This is especially true if you ask for an assignment back within about 10 days of its being submitted, and it is ESPECIALLY true if YOU turned in an assignment late, or by email, for any reason. Have confidence that I want to get it back to you as quickly as I can, because it is an important learning tool.

9. Seeking information about your grade on a paper without collecting the paper itself with comments. This is especially true if it is accompanied by the phrase, “I just want to know what I got on it.”
10. Not collecting your paper with comments.

11. Asking whether class will be cancelled on a given day because it adjoins a holiday even though it is on the University’s class schedule; cancelling such classes is not generally fair to people who have paid for that class. If you miss such a class, you must make some provision to learn covered material. If class is to be cancelled for any reason, that will be announced by email.

12. Asking, “Will we be doing anything important in class on____” and/or “would you be willing to send me notes for that class.” You must make your own arrangements with respect to classes you miss, though I’d be happy to talk to you about the class after the fact. I will NOT, however, afford you a private lesson if you missed the class, unless you have a doctor’s note explaining your absence, and have exhausted other options.

13. The phrase, “I don’t deserve the grade ___ because I’m just not a ___ student.”
CRIMINAL LAW SYLLABUS

**Please note that these dates and assignments are subject to change, and we may not cover all the material listed. Additional reading may be posted.***

WEEK 1

Mon. Jan. 9
Thurs. Jan. 12:

I. INTRO TO CRIMINAL LAW

A. WHAT’S A “CRIME,” AND WHAT SHOULD BE DEEMED “CRIMINAL”? 

B. WHERE DO WE FIND CRIMINAL LAW?
   - Common Law
   - Statutes (supercede common law)
   - Model Penal Code (MPC)
   - International Law
   [Possible electronic research exercise]

C. HOW DOES THE CONSTITUTION LIMIT CRIMINAL LAW?

Reading:
CB: pp. 1-5
Look over the American Law Institute “Model Penal Code” Appendix, just get a sense of its whole organization, but focus on Article 1.
Supp. pp. 1-4; p. 29-33

II. THEORIES OF PUNISHMENT UNDERLYING ALL CRIMINAL LAWS
(Retributivist vs. Utilitarian Theories)

A. WHAT’S PUNISHMENT?

B. WHY PUNISH?

Reading:
CB: 30-50;
p. 58 note 6;
Supp. 11-24
C. HOW MUCH SHOULD WE PUNISH?
(THEORIES OF PUNISHMENT CONT.,
Eight Amendment Proportionality)

Reading:
CB pp. 69-91 (Kant, Bentham, Coker and Ewing)
Supp. pp. 53-69

/POSSIBLE ADDITION ON SHAMING PUNISHMENT:
[EMENTARA]/

III. HOW SHOULD WE READ, OR WRITE, CRIMINAL STATUTES?

Reading:
CB: pp.105-119 (Banks, Morales)

[POSSIBLE ADDITION: FOSTER]

IV. ROLES OF JUDGE AND JURY,
AND THE PROSECUTION’S BURDEN OF “PROOF”:
----WHAT’S “BEYOND A REASONABLE DOUBT”?
----“JURY NULLIFICATION”
----A LITTLE ON PLEA BARGAINING AND SENTENCING

POSSIBLE FILM: “TWELVE ANGRY MEN”

Reading:
CB: pp.9-19 (Reasonable doubt, and the Owens case, Jury Nullification)

(**SKIP THE REASONABLE DOUBT INSTRUCTIONS**)
Mon., Jan.30

**Likely DUE date for Writing Assignment #1**********

Thurs., Feb. 2

V. THE “ELEMENTS” OF CRIME:
WHAT THOUGHTS AND ACTS ARE CRIMINAL?

1. WHEN CAN ONE BE SAID TO HAVE “ACTED”?
( THE REQUIREMENT OF ACTUS REUS)

Reading:
CB: pp.127-130 (Actus Reus, thru Martin v. State, and notes following),
and pp.134-140 (notes 5, 6 - Decina, 7, 8, 9, Beardsley,
and notes 1-4 following Beardsley, with particular attention to
the Kitty Genovese case);
MPC § 2.01
Supp. pp 91-94

[POSSIBLE ADDITION TO ACTUS REUS: LAMBERT]

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WEEK  5
Mon., Feb. 6
Thurs. Feb. 9

2. DO THOUGHTS COUNT?
(THE REQUIREMENT OF MENS REA?)

Reading:
CB: pp. 153-170 (Conley, skip over notes on transferred intent
MPC approach, State v. Nations)
MPC § 2.02
Supp. pp. 126-142 (*skip transferred intent on p. 132); p.144
(recklessness), and pp. 148-49

3. IS IT ALL RIGHT IF YOU JUST MADE A MISTAKE?
i. , , , , SOMETIMES, NO:
(STRICT LIABILITY)

Reading:
CB: 186-193 (Garnett)
MPC §2.05
Supp. pp. 155-159

ii. , , , , AND SOMETIMES, YES:
(MISTAKE DEFEATING PROOF OF “SPECIFIC” INTENT)

Reading:
CB: pp. 194-194 (Navarro, thru note 3)
MPC §2.04
Supp. pp. 163-169

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4. THE “INCHIOATE” (incomplete) CRIME OF ATTEMPT:
WHEN HAVE YOU GONE TOO FAR?
Reading:
CB: 748-755; “Initial Effort…”, Peaslee, Rizzo, and notes
MPC § 5.01
Supp. pp. 405-408, 414-440

5. BUT WAS THE DEFENDANT TRULY THE “CAUSE” OF THE HARM?
(SINE QUA NON/“BUT-FOR”/“CAUSE-IN-FACT” CAUSE vs.
“PROXIMATE”/“LEGAL” CAUSE)
Reading:
CB pp. 215-220 (Oxendine, and “Proximate Cause”)
Kibbe v. Henderson; (to be posted on blackboard)
MPC § 2.03 (2)(a)&(b)

VIII. HOMICIDE, AS AN EXAMPLE OF CRIME:
- IS THERE MORE TO MURDER THAN KILLING SOMEONE?
A. “INTENTIONAL” HOMICIDES

1. MURDER - The four types recognized at common law:
   a. Intent to kill (“Malice”)
   b. Intent to do serious bodily harm
   c. Extreme Recklessness (“Depraved Heart” murder)
   d. Felony Murder

2. MURDER UNDER THE MPC

3. “FIRST-DEGREE” MURDER: THE EXAMPLE OF “PREMEDITATION”—can you kill without thinking?
Reading:
CB: 235-247
(these pages contain, among other things different state homicide laws; just notice variations among state homicide crime; do not worry about trying to understand each law; see if you can identify one or two differences between two states’ definitions of the same crime);
CB: pp. 253-263 (Guthrie; Midgett; Forrest)
MPC §210.0 – §210.2
Mon, Feb. 27

4. VOLUNTARY MANSLAUGHTER
(CULPABILITY FOR MURDER MITIGATED BECAUSE
OF THE UNCONTROLLABLE "HEAT OF PASSION")

a. Who counts as a "Reasonable" Person?
b. What's "Adequate Provocation" for that person?
c. How long does "heat" last before they "Cool"?

Reading:
CB: 259-270 (Giraud v. State); 281-288 (Model Penal Code
version of manslaughter; People v. Casassa)
MPC §210.3
Supp. pp. 571-583

B. UNINTENTIONAL HOMICIDES-- KILLING BY RISK-TAKING
"IN VOLUNTARY" MANSLAUGHTER
(a.k.a. "criminally negligent homicide")

Reading:
CB: pp. 304-315 (Hernandez; Williams, thru note 5)
Supp. pp. 583-585

***SELF-EVALUATION QUIZ*****

Thurs. March 1

**********MIDTERM EXAMINATION**********
***In-class Death Penalty exercise, DISTRIBUTED******

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******************SPRING BREAK******************
Mon. March 12
[Review of Mid-Term]

C. SHOULD WE KILL KILLERS?
(THE DEATH PENALTY AND THE CONSTITUTION)

Reading:
CB: 345-369 (Gregg; McCleskey)

******IN-CLASS DEATH PENALTY HEARING EXERCISE******

[POSSIBLE MODULE: PROPERTY CRIMES/WHITE COLLAR CRIMES;
CIVIL RIGHTS VIOLATIONS]

***************Writing Assignment #2 DISTRIBUTED***********

IX. DEFENSES – WHEN IS CRIME JUSTIFIED, OR EXCUSED?

A. AN INTRODUCTION TO DEFENSES:
IS “JUSTIFIED” BETTER THAN “EXCUSED”?

Reading:
CB: 480-486 (note 1)

Mon. March 19
Thurs. March 22

B. NECESSITY AND DURESS
– DID YOU REALLY HAVE A CHOICE?

Reading:
CB: 560-566 (Nelson v. State, and ALI Comments); 572-580 (Queen v.
Dudley and Stephens & Notes, and Kadish on Excusing Crime); 583-586
(United States v. Contento-Pachon)
MPC: §§ 2.09; 3.02
Supp. pp. 323-330

-- CIVIL DISOBEEDIENCE – A CRIME, OR DEFENSE?
C. SELF-DEFENSE – WHERE’S THE FINE LINE?

Reading:
CB: 500-532 (Peterson, Goetz, Wanrow, and notes)
Supp. pp. 243-248
MPC §3.04; 3.05

D. BATTERED WOMEN’S SYNDROME:
A JUSTIFICATION OR AN EXCUSE?

Reading:
CB: pp. 532-546 (State v. Norman x 2)

POSSIBLE FILM: DEFENDING OUR LIVES

POSSIBLE ADDITION: CONSENT DEFENSE/RAPE

E. INTOXICATION
- CAN DRINKING BE TANTAMOUNT TO KILLING?

Reading:
Supp. pp. 345-350
MPC §2.0

F. INSANITY – WHO’S THE VICTIM?

Reading:
Supp. pp. 363-392
MPC § 4.01; 4.02
WEEK 13

Mon. April 9
Thurs., April 12 (LAST CLASS)

G. DEFENSES AT THEIR LIMITS - CAN WE EXCUSE SOCIETY?

-- THE CULTURAL DEFENSE

--THE ROTTEN SOCIAL BACKGROUND DEFENSE

Reading:
CB: pp.715-717 (The "Rotten Social Background" defense)

[POSSIBLE ADDITION: HATE CRIME]

WEEK 14
April 16 – NO CLASSES (Patriots Day)
POSSIBLE REVIEW

TAKE-HOME FINAL EXAM DISTRIBUTED THIS WEEK

April 20-27 - FINAL EXAMS

Thurs., April 26th – OPEN-BOOK, TAKE-HOME FINAL EXAM DUE, BY OUR USUAL CLASS TIME; IN MY MAILBOX.